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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

JEFFERSON CITY CABINET CO., *Petitioner*,

v.

LOCAL UNION 748 OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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United Steelworkers v. *Warrior & Gulf Co.*, 363 U.S. 574 ..... 4, 5, 13

Other Authorities:

Cox, *Reflections Upon Labor Arbitration*, 72 Harvard Law Review 1482 5
Gregory, *The Law of the Collective Agreement*, 57 Michigan Law Review 635 5
Procedural Requirements of a Grievance Arbitration Clause, Another Question of Arbitrability, 70 Yale Law Journal 611 5

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v.

LOCAL UNION 748 OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Opinions Below

The opinions and orders of the District Court are unreported and are printed in the Record at pp. 53a, 68a, and 71a. The opinion of the Court of Appeals for the Sixth Circuit is reported at 314 F.2d 192 (Petition, Appendix, 9-16).

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition.

Questions Presented

1. In an action to compel arbitration of employee discharges, are procedural objections to arbitration to be referred to the arbitrator or resolved by the courts when the agreement provides for arbitration of questions of its interpretation and application?

2. Pursuant to an agreement which provides for arbitration of grievances claiming that discharges are not for just cause, are grievances over the discharge of employees for allegedly striking in violation of the no-strike, no-lockout provisions of the agreement subject to arbitration?

Statute Involved

Section 301(a) of the Labor Management Relations Act, 1947, 290 U.S.C. § 185(a) is the pertinent statutory provision. It appears in the Petition at page 2.

Statement

Petitioner entered into a collective bargaining agreement with Respondent on September 12, 1958, effective until May 1, 1961, (14a). Pursuant to this agreement, grievances involving claimed violations of the agreement or failure to perform obligations assumed thereunder, including claims of discharge without just cause, were subject to arbitration (14a, 20a, 28a).

On February 7, 1961, approximately 200 employees walked out of Petitioner's plant and on the following day the strike became plant-wide. Thereafter on various dates, defendant discharged employees who did not return to work (66a-67a). A grievance was subsequently filed protesting the discharges which was not satisfied. A demand for arbitration was made by Respondent with which Peti-

tioner refused to comply (10a-12a). As a consequence this action was commenced.

Disputing Petitioner's assertion that the strike was caused by a single dispute or grievance, Respondent filed affidavits to show that a large backlog of grievances filed by a large number of employees existed at the time of the walkout and strike and that these grievances had accumulated over a period of months prior to February 7, 1961. Due to the dilatoriness of Petitioner, contrary to its obligation under Article VII, Section 1 of the agreement, the grievance procedure had broken down and had become ineffective, causing considerable unrest and tension among Petitioner's employees. Petitioner's demonstrated unwillingness to process grievances with defendants resulted in the events of February 7, 1961. (44a-53a). Respondent contended that under the circumstances the discharges of its employees were not for just cause.

The District Court granted Respondent's motion for summary judgment, finding that the discharge grievances were clearly referable to arbitration under the terms of the collective bargaining agreement. (68a, 71a). The Court of Appeals affirmed, rejecting Petitioner's defenses that Respondent had repudiated arbitration and that it had lost the right to arbitration because it had not satisfied procedural requisites to arbitration. As to the latter, the Court found the issue raised by Petitioner was one properly to be determined in the arbitration proceeding sought by Respondent.

ARGUMENT

I. There Is No Conflict of Decisions Which Warrants Grant of the Petition

Both the *Brass & Copper Workers* and the *Boston Mutual Life Insurance Co.* decisions,[1] on which Petitioner relies as creating a conflict with the decision of the court below, were decided prior to June 20, 1960, when this Court announced its opinions in the three *Steelworkers* cases.[2] Those opinions set forth the principles and guidelines to be followed in developing the body of federal law governing the enforcement of collective bargaining agreements.[3] Since the *Steelworkers* decision, the court below and the three other circuit courts which have faced the first question in this case have been in agreement, and no circuit court has decided it to the contrary.[4]

The dates of the two contrary decisions are more than coincidental, for decisions since the *Steelworkers* cases have drawn substantially from them and rest solidly upon the principles enunciated in them.[5]

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[1] *Brass & Copper Workers* v. *American Brass Co.*, 272 F. 2d 849, (C.A. 7, 1959); *Boston Mutual Life Insurance Co.* v. *Insurance Agents International Union*, 258 F 2d 516 (C.A. 1, 1958).

[2] *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564; *United Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574; *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593.

[3] *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448; *Dowd Box Co.* v. *Courtney*, 368 U.S. 502.

[4] *Livingston* v. *John Wiley & Sons*, 313 F. 2d. 52, (C.A. 2) decided Jan. 11, 1963, petition for certiorari filed March 15, 1963, No. 934, this Term; *Deaton Truck Line* v. *Local 612, etc.*, 314 F. 2d 418, (C.A. 5), decided Nov. 16, 1962, and modified March 14, 1963; *Radio Corporation of America* v. *Association of Professional Engineering Personnel*, 291 F. 2d 105 (C.A. 3), decided May 25, 1961; *International Tel. & Tel. Corp.* v. *Local 400, International Union of Electrical Workers*, 286 F. 2d 329 (C.A. 3), decided December 20, 1960.

[5] *Livingston* v. *John Wiley & Sons*, 313 F. 2d 52, at 61-63, (C.A. 2); *International Tel. & Tel. Corp.* v. *Local 400, International Union of Electrical Workers*, 286 F. 2d 329, at 331-332, (C.A. 3); *Deaton Truck Line* v. *Local 612, etc.*, 314 F. 2d 418, at 422 (C.A. 5).

Thus, until such time as a circuit court reaches a contrary view notwithstanding the *Steelworkers* principles, there is not such a conflict in decisions as warrants the grant of the petition.

Additional reasons exist why the Petition in this case should be denied. As the court below indicated, other reasons were advanced by Respondent why the procedural issue should have been resolved in its favor. The court found support for one of Respondent's contentions and expressed no opinion as to others (Petition pp. 13-14). Thus, there are alternative grounds of decision which would make it possible to dispose of this case without reaching the question presented in the Petition.

Finally, on the question presented, the reasoning set forth in this decision, as well as in the recent decisions of the other circuits in agreement with it and in the discussions of commentators on this issue,[6] leaves little doubt that the court below correctly decided the question.[7] Indeed, Petitioner has not argued to the contrary in its Petition.[8]

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[6] Cox, *Reflections Upon Labor Arbitration*, 72 Harvard Law Review 1482, 1510-1512; Gregory, *The Law of the Collective Agreement*, 57 Michigan Law Review 635, 647-650; *Procedural Requirements of a Grievance Arbitration Clause, Another Question of Arbitrability*, 70 Yale Law Journal 611.

[7] Resolution of the procedural question of timeliness raises a number of questions as to the intent of the parties in establishing the time limits, as to their application in present circumstances, the effect of the fact that the employees did not have normal access to the plant, whether the agreement requires that the first four steps be followed prior to arbitration in all circumstances, and whether the grievances presented a continuing violation within the meaning of the agreement. These issues go to the heart of the system of industrial self-government, and are typical of the issues which parties refer to arbitration in expectation that an arbitrator will bring considerations to bear which are foreign to the competence of the court and are unexpressed in the agreement. See *United Steelworkers v. Warrior & Gulf Navigation Co., supra* and *Cox, Reflections Upon Labor Arbitration*, 72 Harvard Law Review 1482, 1498-1499, quoted therein.

[8] In this connection, it is to be noted that although Petitioner seeks certiorari as to this issue, in its petition for rehearing filed in the court

Under all the circumstances, denial of certiorari in this case would be consistent with the controlling principles in this field.

II. There Is No Inconsistency Between the Decision Below and the Decisions of This Court

Petitioner's argument that the decision below is inconsistent with the decision in the *Drake Bakeries* case,[9] is the same as the argument made in its Petition in the companion case No. 1003 and, in fact, is based on the decision of the Court in that case (Petition, page 7).[10] The answer is accordingly also the same.

The Court below in the companion case agreed with the District Judge that in view of this Court's decision in the *Drake Bakeries* case:

> "[I]t was not the law that the question of liability for violation of a no-strike provision could not be submitted to arbitration, but that *it was a question whether under the provisions of the bargaining agreement in question such an issue was an arbitrable one.*" (Petition, Appendix, p. 25, emphasis added).

Petitioner nonetheless asserts that the court below thereby "interpreted and applied *Drake* as requiring a holding that the no-strike clause and grievance provisions are not mutually dependent covenants" and that the Court misinterpreted and misapplied Drake, "By failing to consider the no-strike provisions in their context." (Petition p. 7).

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below, it did not seek reconsideration of this aspect of the decision below, despite the fact that the *Wiley* and *Deaton* cases were decided after the briefs were filed, and were raised by Respondent for the first time in oral argument.

[9] *Drake Bakeries* v. *Local 50, American Bakery Workers*, 370 U.S. 254

[10] *Jefferson City Cabinet Co.* v. *International Union of Electrical Workers, et al.*, 313 F. 2d 231 (C.A. 6).

It is apparent that Petitioner has misinterpreted the decision of the Court below, and that the Court below faithfully construed and followed the principles of *Drake*.

III. There Is No Other Question of Importance In This Case

Petitioner contends that this Petition raises important questions not decided in the *Drake Bakeries* case, *supra*. This contention is identical to its contention in the Petition in the companion case. As in that case, the question raised is a mere question of contract interpretation and of fact.

In the *Drake Bakeries* case, *supra*, this Court set forth the guiding principles to be followed by the lower courts in determining whether claims of breach of no-strike provisions are arbitrable and whether or not the promise to arbitrate has been so repudiated by one party as to excuse the other party from performance. This case does not involve a claim of breach of a no-strike clause. It involves the arbitration of discharges clearly provided for by contract. Petitioner does not claim that any further principle remains to be established in this case. Instead, Petitioner asserts that there are "questions of the fact and effect of such repudiation" presented in this case (Petition, p. 5). There would be no question as to the effect of repudiation if such had been found, but it was not. The Court below considered and rejected the contention of repudiation in its initial decisions in this case and its companion case and in rejecting petitions for rehearing in both cases.[1]

Petitioner attempts to imbue with some magical significance the fact that the no-strike, no-lockout obligation is referred to twice in the agreement in this case rather than once as in *Drake*. But this fact does not alter

[1] The Court below noted, among other things, that the Petitioner's conduct was inconsistent with its claim of repudiation (Petition, Appendix, p. 12).

the applicable principles. In each case it was necessary to determine the meaning of the obligation and not its form. This was faced and decided by the Court below, and no reason has been advanced why this Court should now be required to consider this question of contract interpretation.

The issue raised by Petitioner is narrow and has no impact beyond this case.[12] As this Court has made abundantly clear, the public interest lies in having agreements to arbitrate disputes arising under collective bargaining agreements enforced, regardless of the nature of the dispute. *Drake Bakeries v. American Bakery Workers*, 370 U.S. 254, 263-264.[13] The only question in this case relates to "the particular decision reached in [an] individual controversy" which, Petitioner appears to concede, does not justify the grant of its Petition. (Petition, p. 6).

[12] Despite Petitioner's assertion, Respondent does not recognize the contract provisions involved as typical provisions.

[13] See *United Steelworkers v. Warrior and Gulf Co., supra; United*

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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